

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

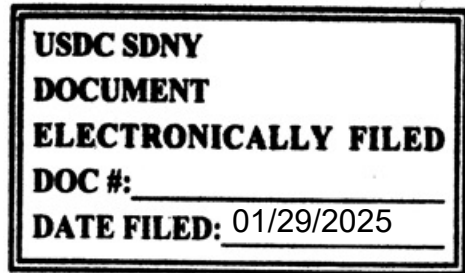
-----X
ZAKUNA-ZE HANDBERRY, ET AL.,

Plaintiffs,

- against -

WILLIAM C. THOMPSON, JR. ET AL.,

Defendants.
-----X



96-CV-6161 (GBD) (RWL)

**PROTECTIVE ORDER,
AND ORDER REGARDING
FERPA NOTICE PLAN**

ROBERT W. LEHRBURGER, United States Magistrate Judge.

This order addresses potential disclosure by Defendants to Plaintiff Class Counsel of Plaintiff class members' education records containing personally identifying information ("PII") that is protected by the Family Education Rights and Privacy Act of 1974 ("FERPA"). The PII may be found in documents including, but not limited to, requests for education services (forms related to New York City Department of Correction ("DOC") Directive 3503B); enrollment records; time and attendance records; Individualized Education Programs ("IEPs") and/or Special Education Plans ("SEPs"); and records concerning English Language Learner status.

Plaintiffs and Defendants (the "Parties") have requested that the Court: (1) enter an order protecting the right to privacy of Plaintiff class members in the educational records that Defendants disclose to Plaintiff Class Counsel and approving a form of Notice of Potential Disclosure of Education Records (the "Notice"); and (2) assuming entry of a protective order with the restrictions set forth below, order Defendants to disclose to Plaintiff Class Counsel the PII of: i) any current class member after compliance with the Notice requirements described below and ii) in response to complaints by individual class members that they are not receiving educational services. Following a conference with the Parties and the Court, Defendants have submitted a revised form of Notice for the Court's approval. The Court has reviewed the proposed Notice and finds it acceptable.

Accordingly, it is ORDERED that:

1. Defendants shall produce to Plaintiff Class Counsel mutually agreed upon records upon compliance with the notice requirements described below. If the Parties are unable to agree on the application of the scope of disclosure as described above, either party make seek the Court's assistance;

2. The proposed Notice filed by Defendants on January 24, 2025 at Dkt. 378-1 is APPROVED;

3. By February 7, 2025, Defendants shall post the Notice in the following areas in the facilities maintained by the DOC at Rikers Island: the school floors, as well as in the Robert N. Davoren Complex, the Rose M. Singer Center, and Rose M. Singer Enhanced Supervised Housing, where most of the potential Plaintiff class members (individuals aged 18 to 21 years old) are housed;

4. The New York City Department of Education ("DOE") and DOC shall make reasonable, joint efforts to distribute a copy of the Notice to each current Plaintiff class member through the month of February and to new class members on a rolling basis through June 26, 2025;

5. DOE will maintain a list of Plaintiff class members who have timely objected to disclosure and retain copies of their objection forms.

6. If a Plaintiff class member objects to disclosure in the manner specified in the Notice, Defendants will not disclose to Plaintiff Class Counsel any PII in education records concerning that class member except by further order of the Court or as otherwise authorized by law;

7. If a Plaintiff class member does not object to disclosure, Defendants' disclosure to Plaintiff Class Counsel of PII in education records concerning that class member in connection with this action shall be deemed to comply with FERPA;

8. The PII disclosed by Defendants to Plaintiff Class Counsel pursuant to this Order shall be maintained by the Parties in a confidential manner, and Plaintiff Class Counsel shall not disclose PII to any other person, except:

- a. Counsel for Defendants;
- b. Consultants or experts assisting Plaintiff Class Counsel in the *Handberry* lawsuit, to the extent deemed necessary by Plaintiff Class Counsel;
- c. The Court (including a court reporter mediator, or other person having access to PII by virtue of being employed by or whose services are retained by, the Court), in which case such records will be filed under seal without the need to obtain prior leave of Court; and
- d. The current or former Plaintiff class member about whom the PII pertains.

The PII disclosed under this Order shall be used by Plaintiff Class Counsel only in connection with this action and not for any other litigation or other purpose.

SO ORDERED.

A handwritten signature in black ink, appearing to read 'R. Lehrburger', is written above a horizontal line.

ROBERT W. LEHRBURGER
UNITED STATES MAGISTRATE JUDGE

Dated: January 29, 2025
New York, New York

Copies transmitted this date to all counsel of record.